Tenaga Nasional Bhd v Advanced Medical Products Sdn Bhd

HIGH COURT (IPOH) — CIVIL SUIT AA-22NCVC-104–11 OF 2017
ANSELM CHARLES FERNANDIS JC
13 JUNE 2018
[2018] MLJU 842

Civil Procedure — Transfer of action — High Court to High Court — Application by defendant to transfer proceedings filed by plaintiff from Ipoh High Court to Kuala Lumpur High Court to be heard together with proceedings filed by defendant in Kuala Lumpur High Court — Courts with most proximate nexus — Whether cause of actions in both suits different — Whether defendant proved that Kuala Lumpur was the proper forum conveniens — Rules of Court 2012 O 57

This was an application ('encl 8') by the defendant to transfer the proceeding in the present suit ('Ipoh Suit') to the High Court of Kuala Lumpur to be heard with Civil Suit No 22NCVC-571–10 of 2015 ('KL Suit') under O 57 of the Rules of Court 2012 ('the ROC'). The KL Suit was filed by the defendant for the following declarations: (a) that the notice of disconnection of electricity supply which was issued by the plaintiff was invalid and void; (b) that the disconnection of electricity by the plaintiff was wrong and invalid; and (c) a mandatory injunction for the reconnection of the electricity supply. The defendant had also filed an application under O 14A of the ROC for the disposal of the KL Suit. The Ipoh Suit was the plaintiff's action under s 38(3), (4) and (5) of the Electricity Supply Act 1990 ('the ESA') to recover loss of revenue from the defendant due to meter tampering by the defendant. The defendant's application in encl 8 was premised on the following reasons: (i) the Ipoh Suit and the KL Suit were closely related in that both cases concerned allege tampering of which the defendant denied; (ii) the plaintiff ought to have filed a counterclaim in the KL Suit; (iii) the transferring of the Ipoh Suit to the Kuala Lumpur High Court would save the court's time and cost; and (iv) to create consistency on the issues to be tried.

Held, dismissing encl 8 with costs of RM1,000:

(1) From the facts, it was clear that: the cause of action in the Ipoh Suit arose in Perak where the alleged tampering occured; both the plaintiff and the defendant had their respective offices and place of business in Perak; the defendant had defaulted in payment and the plaintiff commenced action in the Ipoh High Court; and it was reasonable to assume that the contract for the supply of electricity too were concluded in Perak as the defendant's factory was in Ayer Tawar, Perak. In addition, the court

found that the sum payable by the defendant to the plaintiff by virtue of s 38(5) would be in Perak. The Ipoh High Court had the most proximate nexus to the dispute between the parties in the determination of the loss of revenue under s 38(3), (4) and (5) of the ESA. The most important aspects of the Ipoh Suit, beginning from the cause of action to the payment of the sum due and the convenience for witnesses to attend court would point to Ipoh as the forum conveniens (see paras 23–26).

(2) The KL Suit had no relation to the Ipoh Suit as far as the recovery of loss of revenue was concerned. This could be seen from the question posed by the defendant in their application under O 14A of the ROC which solely concerned the legality of the discontinuance of the electricity by the plaintiff which was distinct and independent of the matter concerned with in the Ipoh Suit ie on the claim of loss of revenue by the plaintiff. Merely because the defendant had filed its action first in the KL Suit did not necessarily mean that the Kuala Lumpur High Court was the appropriate forum conveniens (see para 28).

(3) Although it was common factor in both the KL Suit and Ipoh Suit that the alleged tampering occurred at the defendant's place of business in Ayer Tawar, Perak, this by itself was not a cause for the two matters be consolidated. This was because the cause of action for both suits were obviously different and consequentially so were the reliefs sought by the parties. On totality, the defendant had failed to prove that the Kuala Lumpur High Court was the proper forum conveniens (see paras 29–30).

[Bahasa Malaysia summary

Ini adalah permohonan ('lampiran 8') oleh defendan untuk memindahkan prosiding dalam guaman ini ('Guaman Ipoh') kepada Mahkamah Tinggi Kuala Lumpur untuk didengar dengan Guaman Sivil No 22NCVC-571–10 Tahun 2015 ('Guaman KL') di bawah A 57 Kaedah-Kaedah Mahkamah 2012 ('KM'). Guaman KL telah difailkan oleh defendan untuk deklarasi-deklarasi berikut: (a) bahawa notis potongan bekalan elektrik yang dikeluarkan oleh plaintif adalah tidak sah dan terbatal; (b) bahawa potongan elektrik oleh plaintif adalah salah dan tidak sah; dan (c) injunksi mandatori untuk sambungan semula bekalan elektrik. Defendan juga telah memfailkan permohonan di bawah A 14A KM untuk penyelesaian Guaman KL. Guaman Ipoh adalah tindakan plaintif di bawah s 38(3), (4) dan (5) Akta Bekalan Elektrik 1990 ('ABE') untuk mendapat balik kerugian hasil daripada defendan akibat pengubahsuaian meter oleh defendan. Permohonan defendan dalam lampiran 8 berpremiskan sebab-sebab berikut: (i) Guaman Ipoh dan Guaman KL berkait rapat di mana kedua-dua kes melibatkan pengubahsuaian yang dikatakan itu yang mana telah dinafikan oleh defendan; (ii) plaintif patut memfailkan tuntutan balas dalam Guaman KL; (iii) memindahkan Guaman Ipoh kepada Mahkamah Tinggi Kuala Lumpur akan menjimatkan masa dan

kos mahkamah; dan (iv) untuk mewujudkan konsistensi berhubung isu-isu untuk dibicarakan. A

Diputuskan, menolak lampiran 8 dengan kos RM1,000:

(1) Berdasarkan fakta, ia adalah jelas bahawa: kausa tindakan dalam Guaman Ipoh bermula di Perak di mana pengubahsuaian yang dikatakan itu berlaku; kedua-dua plaintif dan defedan mempunyai pejabat dan tempat perniagaan mereka masing-masing di Perak; defendan telah gagal membuat bayaran dan plaintif telah memulakan tindakan di Mahkamah Tinggi Ipoh; dan ia adalah munasabah untuk mengandaikan bahawa kontrak untuk bekalan elektrik juga disempurnakan di Perak kerana kilang defendan adalah di Ayer Tawar, Perak. Selain itu, mahkamah mendapati bahawa jumlah yang kena dibayar oleh defendan kepada plaintif menurut s 38(5) adalah di Perak. Mahkamah Tinggi Ipoh mempunyai kaitan paling rapat dengan pertikaian antara pihak-pihak untuk penentuan kerugian hasil di bawah s 38(3), (4) dan (5) ABE. Aspek-aspek paling penting Guaman Ipoh, bermula daripada kausa tindakan kepada bayaran jumlah tertunggak dan kesesuaian saksi-saksi untuk menghadiri mahkamah menunjuk kepada Ipoh sebagai forum conveniens (lihat perenggan 23–26). B C D E

(2) Guaman KL tiada kaitan dengan Guaman Ipoh setakat mana pengembalian kerugian hasil adlaah berkaitan. Ini dilihat daripada persoalan yang dikemukakan oleh defendan dalam permohonan mereka di bawah A 14A KM yang hanya berkaitan kesahihan pemotongan bekalan elektrik oeh plaintif yang merupakan perkara berbeza dan berasingan daripada yang berkaitan dalam Guaman Ipoh iaitu berhubung tuntutan kerugian hasil oleh plaintif. Hanya kerana defendan telah memfailkan tindakannya dahulu dalam Guaman KL tidak semestinya bermaksud bahawa Mahkamah Tinggi Kuala Lumpur adalah forum conveniens yang sesuai (lihat perenggan 28). F G

(3) Walaupun ia adalah faktor biasa dalam kedua-dua Guaman KL dan Guaman Ipoh bahawa pengubahsuaian yang dikatakan itu berlaku di tempat perniagaan defendan di Ayer Tawar, Perak, ini dengan sendirinya bukan sebab untuk menggabubgkan dua perkara tersebut, Ini adalah kerana kausa tindakan kedua-dua guaman jelas berbeza dan akibatnya begitu juga dengan relief-relief yang dipohon oleh pihak-pihak. Secara keseluruhan, defendan telah gagal membuktikan bahawa Mahkamah Tinggi Kuala Lumpur adalah forum conveniens yang wajar (lihat perenggan 29–30).] H I

Notes

For cases on High Court to High Court, see 2(5) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 10854–10862.

Cases referred to

Amalan Lengkap Sdn Bhd v SKS Coachbuilders Sdn Bhd [2016] MLJU 513; [2016] 1 LNS 883, HC (refd)

Low Long Yoong & Anor v Low Kok Choon & Anor [2014] 2 MLJ 725; [2013] AMEJ 0383, HC (refd)

Sova Sdn Bhd v Kasih Sayang Realty Sdn Bhd [1988] 2 MLJ 268; [1987] 1 LNS 55 (refd)

Tan Hoo Eng & 2 Ors v Lim Keck Eng & 6 Ors [2014] AMEJ 1362 (refd)

Tenaga Nasional Bhd v Mayaria Sdn Bhd & Anor Civil Appeal No 02(f)-28–03 of 2017(W) (unreported), FC (refd)

Legislation referred to

Companies Act 1965

Courts of Judicature Act 1964 ss 3, 23(1)

Electricity Supply Act 1990 ss 37, 38, 38(1), (3), (4), (5)

Rules of Court 2012 O 14A, O 57, O 57 r 1(4)

Faizah bt Khamarudin (Azmi & Assoc) for the plaintiff.

M Rajenthiran Kumar (Moses Susayan with him) (Raja Badrol Ramli & Azizi) for the defendant.

Anselm Charles Fernandis JC:

[1] This is an application (encl 8) by the defendants to transfer the proceeding in the present Suit No AA-22NCVC-104–11 of 2017 ('Ipoh Suit') to the High Court in Kuala Lumpur to be heard with Civil Suit No 22NCVC-571–10 of 2015 ('KL Suit') The application was made by under O 57 of the ROC.

[2] I had dismissed the defendant's application and now give my reasons for doing so.

BACKGROUND OF THE IPOH SUIT

[3] The plaintiff and the defendant are companies set up under the Companies Act 1965. The plaintiff is a licencee under Electricity Supply Act 1990 ('the ESA') and by virtue of a contract between them supplies electricity to the defendant's premises at No 8442, Jalan Bruas, Batu 17, 32400 Ayer Tawar, Perak and at Lots numbered 8961 and 8964, Batu 19, Jalan Beruas, 32400 Air Tawar, Perak.

[4] The plaintiff has its registered office in Kuala Lumpur and has a branch at Tenaga National Berhad, Bahagian Pembahagian at Lot 1754, Jalan Dato Seri Kamaruddin, Sri Manjung, Perak. The defendant's registered address is at 55, Medan Ipoh Bestari, Ipoh, Perak.

[5] On the 30 October 2014 and 19 March 2015, the plaintiff carried out meter inspections on the defendant's premises.

[6] In these inspections the plaintiff discovered that the meters in the defendant's premises had been tempered with. The total loss as pleaded as a result of the tempering of the meters from all the defendant's premises amounted to RM3,224,639.98.

[7] The plaintiff then proceeded to claim for loss of revenue under s 38(3) of the ESA. Written statements were sent to the defendant under s 38(4) of the said Act. Subsequently the plaintiff commenced an action by way of writ and statement of claim on the 1 November 2017 at the Ipoh High Court to claim the said amount which was 'recoverable by way of a civil action' under s 38(5) of the ESA.

[8] For ease of reference s 38 of the ESA 1990 is produced herewith:

> 38(1) Where any person employed by a licensee finds upon any premises evidence which gives reasonable grounds for him to believe that an offence has been committed under subsection 37(1), (3) or (14), the licensee or any person duly authorized by the licensee shall within three working days from the date of such finding inform the Commission in writing, and the licensee may, upon giving not less than forty eight hours' notice from the same date in such form as may be prescribed, cause the supply of electricity to be disconnected from the said premises.
>
> (1A) Notwithstanding any other provisions in this Act, where a police officer not below the rank of Assistant Superintendent applies to a supply authority or a licensee for the disconnection of the supply of electricity to any premises for a period not exceeding one calendar month under section 21A of the Common Gaming Houses Act 1953 [Act 289], the supply authority or the licensee or any person authorized by the supply authority or the licensee shall immediately disconnect or cause the supply of electricity to be disconnected from those premises.
>
> (1B) Upon receiving such information under subsection (1), the Commission may verify the matter and in cases where it finds that no offence has been committed, the supply of electricity shall be reconnected immediately.
>
> (2) If the supply of electricity has been disconnected under subsection (1), it shall not be reconnected until the licensee at his discretion gives permission for reconnection.
>
> Provided that the period of disconnection shall not exceed three months.

(2A) Notwithstanding subsection (2), if the supply of electricity has been disconnected under subsection (1A), it shall not be reconnected without the written permission of a police officer not below the rank of Assistant Superintendent.

(3) The licensee may require the consumer to pay him for the loss of revenue due to the offence committed under subsections 37(1), (3) and (14) and any reasonable expenses directly incurred by the licensee under this section including expenses incurred in respect of reconnection of electricity in the manner as have been directed by the Commission:

Provided that and subject to subsection (4), if the licensee does not proceed with a claim for such loss of revenue and expenses in court, the licensee may only claim against the consumer for the said loss of revenue and expenses for a period not exceeding six months retrospectively from the date the offence was discovered under subsection (1).

(4) A written statement by an employee of the licensee duly certified by the licensee or any person authorized by the licensee specifying —

(a) the amount of loss of revenue or the reasonable expenses incurred by the licensee;

(aa) the manner of calculation of the loss of revenue and items of expenses; and

(b) the person liable for the payment thereof, shall be prima facie evidence of the payment that has to be made by the consumer under subsection (3) and such written statement shall be notified to the consumer within fourteen working days or any period as extended with the written approval of the Commission after the disconnection.

The amount stated in the written statement under subsection (4) shall, within the period specified in the statement, be due and payable to the licensee and in default of payment such amount shall be recoverable by civil action in a court.

BACKGROUND OF THE KL SUIT

[9] The defendants commenced a separate action against the plaintiff at the Kuala Lumpur High Court Suit No 22NCVC-571–10 of 2015 ('the KL Suit').

[10] At the KL Suit, the defendant (who was the plaintiff there), inter alia, prayed for the following declarations:

4.1 A declaration that the Notice of Disconnection of Electricity Supply under Subsection 38(1) of the Electricity Supply Act 1990 dated 08.10.2015 (Form A) which was issued to the defendant is invalid and void;

4.2 A declaration that the disconnection of electricity by the plaintiff at the defendant's premises at Los numbered 8961 & 8964, Jalan Bruas Bt 17, 32400 Ayer Tawar, Perak on 09.10.2015 was wrong and invalid.

4.3 A mandatory injunction for the reconnection of the electricity supply;

[11] At the same time of the filling of the Kuala Lumpur Suit, the defendant also filed a notice of application (ex parte) dated 21 October 2015 for an interlocutory mandatory injunction directing the plaintiff to reconnect the electricity supply. The ex parte application was granted on 22 October 2015 and the electricity supply at the defendant's premises was immediately reconnected by the plaintiff. The application was then fixed for an inter partes hearing and the High Court had allowed the defendant's application on 18 October 2016.

[12] Following the decision of the High Court in allowing the defendant's application for the interlocutory mandatory injunction in that KL Suit, the plaintiff herein filed a notice of appeal on 11 November 2016.

[13] On 10 January 2017, the defendant had filed an application under O 14A of the ROC for the disposal of the KL Suit on the following question of law:

(a) can a licensee under the Electricity Supply Act 1990 ('the ESA') disconnect electricity supply under s 38(1) of the ESA to a consumer when/after it has remedied the illegal tampering to the circuit/meter and replace the implunged meter to arrest the pilferage of electricity and/or the loss of revenue? and/or

(b) can a licensee under the Electricity Supply Act 1990 (ESA) disconnect electricity supply under s 38(1) of the ESA once the impugned meter had been replaced and the offence under s 37 of the ESA was no longer extant?

[14] On 6 July 2017 and with the consent of the defendant, the Kuala Lumpur High Court had allowed the plaintiff's application for the proceedings at the Kuala Lumpur High Court to be stayed pending the disposal of the case of *Tenaga Nasional Bhd v Mayaria Sdn Bhd & Anor* Civil Appeal No 02(f)-28–03 of 2017(W) (unreported) by the Federal Court where it was submitted had a bearing with regards to the issues prayed for in the KL Suit and the defendants O 14A application.

[15] The plaintiff herein then commenced the Ipoh Suit against the defendant on 1 November 2017.

THE DEFENDANT'S CASE

[16] The defendant asserts the following reasons for the case to be transferred to the Kuala Lumpur High Court:

(a) the present suit and the Kuala Lumpur suit are closely related in that both cases concerned allege tempering of which the defendant denies;

(b) the plaintiff ought to have filed a counterclaim in the KL Suit; and

(c) the transferring of the present suit to the Kuala Lumpur High Court would save the court's time and cost. In other words, there would be avoidance of duplicity of action.

(d) in allowing the present case to the Kuala Lumpur High Court will create consistency on the issues to be tried.

THE PLAINTIFF'S CASE

[17] The plaintiff contends that the issues in the present suit should remain and be tried at the Ipoh High Court because of the following factors:

(a) the issues involved are different. The sole issue in the KL Suit is concerned with the disconnection of electric supply pursuant to s 38(1) of the ESA. In other words, the plaintiff is of the view that the disconnection of the water supply has nothing to do with the present action for the recovery of lost revenue. The claim in the present suit is only concerned with the loss of revenue by the plaintiff because of the allege tempering. The claim for the loss of revenue as in the present case is under s 38(3), (4) and (5) of the ESA;

(b) the application filed by the defendant in the KL Suit concerns purely a point of law as evinced by the application filed by the defendant under O 14A of the ROC to dispose of the Kuala Lumpur suit; and

(c) the plaintiff refutes the defendant's contention that the plaintiff ought to have filed a counterclaim at the Kuala Lumpur High Court. In other words, there is no inhibition in law for the plaintiff to start a fresh action as they had done in the present suit.

THE LAW

[18] Before proceeding further on the facts of the case it would be pertinent to state the principles to be considered in respect of the transfer of proceedings.

[19] The fundamental principles regarding the transfer of proceedings is found in the provisions of s 23(1) of the Courts of Judicature Act 1964 ('the CJA'), which provides for the civil jurisdiction of the High Court as follows:

Civil jurisdiction — general

(1) Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where —

(a) the cause of action arose;

(b) the defendant or one of several defendants resides or has his place of business:

(c) the facts on which the proceedings are based exist or are alleged to have occurred; or

(d) any land the ownership of which is disputed is situated, within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

[20] To further explain on this matter, s 3 of the CJA further defines 'local jurisdiction' to mean:

(a) in the case of the High Court in Malaya, the territory comprised in the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu and the Federal Territory of Kuala Lumpur; and

(b) in the case of the High Court in Sabah and Sarawak, the territory comprised in the States of Sabah, Sarawak and the Federal Territory of Labuan.

[21] Thus, the High Court of Malaya, for instance, constitutes one local jurisdiction. In *Sova Sdn Bhd v Kasih Sayang Realty Sdn Bhd* [1988] 2 MLJ 268; [1987] 1 LNS 55, Lim Beng Choon J elucidated the point as follows:

... a High Court located at Penang or at Alor Setar is but a branch of the High Court in Malaya and each branch of the High Court in Malaya located in any state has concurrent jurisdiction to entertain any civil proceedings regardless of whether the cause of action arose in another state.

In addition, paragraph 12 of the Schedule to the CJA further provides for the additional power of the High Court to transfer proceedings in the following terms:

Transfer of proceedings

Power to transfer any proceedings to any other Court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof:

Provided that this power shall be exercised in such manner as may be prescribed by any rules of court.

[22] Order 57 r 1(4) of the ROC:

Order 57 rule 1(4) states as follows:

Before making any order to transfer any proceedings from:

(a) the High Court to another High Court of co-ordinate jurisdiction;

(b) a Subordinate Court to the High Court;

(c) the High Court to a Subordinate Court; or

(d) Subordinate Court to another Subordinate Court,

the High Court Judge or the Judge of the Sessions Court or Magistrate, as the case may be, shall take into consideration whether the High Court or Subordinate Court which shall hear the case is located at or nearest to the place where:

(A) the cause of action arose;

(B) the defendant, or one of the several defendants, resides or has his place of business;

(C) the facts on which the proceedings are based exist or are alleged to have occurred;

(D) the land the ownership of which is disputed is situated; or

(E) for other reasons it is desirable in the interests of justice that the proceedings should be transferred.

FINDINGS OF THE COURT

[23] From the facts gathered it is clear that the cause of action in Ipoh Suit arose in Perak where the alleged tempering occurred. Both the plaintiff and the defendant have their respective offices and place of business in Perak. Statements under s 38(4) of the ESA had been sent to the defendant which is prima facie evidence of the payment that has to be made by the consumer. The defendant had defaulted in payment and the plaintiff commenced action at the Ipoh High Court. It is not unreasonable to assume that the contract for the supply of electricity between the plaintiff and defendant too were concluded in Perak as the defendant's glove making factory in Ayer Tawar, Perak.

[24] This court is of the view that the sum payable by the defendant to the plaintiff by virtue of s 38(5) would be in Perak. It is undisputed that there exists a contractual relationship between the parties. Where the contract does not specifically stipulate where payment would be made it would naturally be payable at the place where the payment ought to have been made. Support for this view can be found in the case of *Amalan Lengkap Sdn Bhd v SKS Coachbuilders Sdn Bhd* [2016] MLJU 513; [2016] 1 LNS 883, where the High Court held, inter alia:

> [12] In the present case, I find that the plaintiff's pleaded cause of action arose in Melaka. *The facts pleaded by the plaintiff shows that there was a demand made by the*

plaintiff for the defendant to make payment of the balance due under the contract. In a contract that involves the payment of money, the breach occurs when there is failure to pay; and the cause of action would have accrued at the place where the payment is to be made. Though the contract itself does not stipulate the place of payment, it would be reasonable to surmise that any payment due under the Contract would naturally be payable at the Plaintiff's office in Melaka. This principle was reiterated by Charles J in *Northey Stone Co v Gidney* [1894] 1 QB 99 at p 100 in the following terms: The action is brought to recover the balance of price of goods sold and delivered. According to the law applicable to contracts, there being no special stipulation as to the place of payment, the defendant must pay at Bath, where his creditors, the plaintiffs, live.

[13] *Thus, when the defendant failed to make the payment as demanded by the plaintiff, the breach would have occurred in Melaka, ie, where the office of the plaintiff is situated; and the cause of action would arise in Melaka. See also the case of Bank Bumiputra Malaysia Berhad v Melewar Holdings Sdn Bhd & Ors* [1990] MLJU 13; [1990] 1 CLJ Rep 654. The plaintiff's claim would, as such, come well within the ambit of O 57 r 4(a)(A) of the Rules of Court. The Plaintiff also states in its affidavit that its witnesses are residing in Melaka. Therefore, whether the 'suitability or appropriateness' test expounded in *Spiliada* by Lord Goff and adopted by the Supreme Court in *American Express Bank Ltd*; or the 'proximal nexus' test espoused in *Low Loong Yoong & Anor*, is applied, I find that the High Court in Malaya at Melaka would be the appropriate forum to adjudicate upon this dispute.

[25] It is also this court's view that the Ipoh High Court has the most proximate nexus to the dispute between the parties in the determination of the loss of revenue under s 38(3), (4) and (5) of the ESA. This is the mainstay of the plaintiff's claim against the defendant.

[26] The most important aspects of the Ipoh Suit, beginning from the cause of action to the payment of the sum due and the convenience for witnesses to attend court would point to Ipoh as the forum conveniens. In the case of *Low Long Yoong & Anor v Low Kok Choon & Anor* [2014] 2 MLJ 725; [2013] AMEJ 0383 (HC) S Nantha Balan JC (as he then was) elaborated on this point in the following manner:

In my view, the most important task in a transfer application is to ascertain which court has the closest nexus to the dispute. In *Sin Hai Estate Berhad & Ors v Lim Jit Kim & Ors* [2003] MLJU 847; [2003] 1 LNS 16; [2003] 2 AMR 336 His Lordship Justice Abdul Malik Ishak (after examining all the factors) expressed it in the following manner:

> Everything seemed to have taken place in Malacca. Convenience would dictate that Malacca should be the right forum.

Next, the learned judge also went on to approve what was stated by Lim Beng Choon J in the case of *Sova Sdn Bhd*.

[27] The grounds for consideration in assessing the forum which is convenient or fair are set out under the Courts of Judicature Act 1964 (Act 91), s 23(1) and the burden is on the applicant to satisfy the court why the transfer to another court would be more convenient, appropriate and fair for the trial of the case. In this respect, the balance would tilt in favour of the party which is able to satisfy more of the criteria set out under s 23(1) of the CJA and O 57: see *Tan Hoo Eng & 2 Ors v Lim Keck Eng & 6 Ors* [2014] AMEJ 1362.

[28] As it is the the defendant had taken the stand that the present proceeding be transferred to the Kuala Lumpur High Court because they had commenced the KL Suit there earlier on. The KL Suit also in respect of an associate company of the defendant namely Advanced Healthcare Products Sdn Bhd which carries on its business in Sanawang, Negeri Sembilan and which has no relation to the Ipoh Suit as far as the recovery of loss of revenue is concerned. This can be seen from the questions posed by the defendant in their O 14A of the ROC application which solely concerns the legality of the discontinuance of the electricity by the plaintiff which in this court's view is distinct and independent of the matter concerned with in the Ipoh Suit which is the claim of loss of revenue by the plaintiff. It is this court's view that merely because the defendants had filed their action first in the KL Suit does not necessarily mean that the Kuala Lumpur High Court is the appropriate forum conveniens.

[29] It has to be further emphasised that although it is a common factor in both the KL Suite and Ipoh Suit that the alleged tempering occurred at the defendant's place of business in Ayer Tawar, Perak this by itself is not a cause for the two matters to be consolidated. This is because the cause of action for both suits are obviously different and consequentially so are the reliefs sort by the parties.

CONCLUSION

[30] I find that the defendants had failed to prove that the Kuala Lumpur High Court is the proper forum conveniens. This application is therefore dismissed with cost RM1,000 to the plaintiff.

Enclosure 8 dismissed with costs of RM1,000.

Reported by Dzulqarnain Ab Fatar